Supreme Court, U.S.
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No. 97-1674

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

JAMES MAY, *et al.*,
Petitioners,
v.
SHUTTLE, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the D.C. Circuit

BRIEF FOR RESPONDENT INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO IN OPPOSITION

JOHN A. EDMOND
(Counsel of Record)
JEFFREY A. BARTOS
ANNA L. FRANCIS
GUERRIERI, EDMOND & CLAYMAN, P.C.
1331 F Street, N.W.
Suite 400
Washington, D.C. 20004
(202) 624-7400
Counsel for Respondent International Association of Machinists and Aerospace Workers, AFL-CIO

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. Whether the court below properly concluded, in accordance with *Vaca v. Sipes*, 386 U.S. 171 (1967), that petitioners' state-law fraud claim, challenging conduct by a union in its capacity as collective bargaining representative, is preempted by the federal duty of fair representation when the same conduct was also the basis for a fair representation claim?

2. Whether the court below properly concluded that petitioners could not prevail on their Age Discrimination in Employment Act claim against their former union because they had failed to adduce any evidence demonstrating that the union was involved with the decision to terminate petitioners' employment?

3. Whether the court below properly concluded that the National Mediation Board acted within its jurisdiction when it made a representational determination pursuant to a petition filed by a carrier and subsequently joined by a union?

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OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia granting summary judgment in favor of respondents is unreported. Appendix to Petition for Writ of Certiorari ("Pet. App.") 4a-34a. The United States Court of Appeals for the District of Columbia Circuit adopted the district court's opinion and published the opinion as if it was an opinion of the Court of Appeals. That opinion is reported at 129 F.3d 165.

STATEMENT OF THE CASE

This case arises from petitioners' loss of union representation following an election in 1992 and their subse-

quent loss of employment in 1993, when petitioners were not represented by any union.

Until 1993, petitioners were employed as "fleet service employees" on a succession of airlines operating a shuttle service between Washington, D.C., New York City, and Boston. Most recently, petitioners were employed by Shuttle, Inc., a corporation managed by USAir, Inc., and doing business as the "USAir Shuttle". For most of that period, until August 1992, petitioners were represented for collective bargaining purposes by the International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM"). Pet. App. 5a-6a.

At the time USAir assumed management responsibilities for Shuttle, it petitioned the National Mediation Board ("NMB") for a determination that USAir and Shuttle were a "single carrier" for labor-relations purposes. On May 12, 1992, the IAM invoked the NMB's jurisdiction in support of USAir's "single carrier" petition. At that time, the fleet service employees at Shuttle, represented by the IAM, numbered approximately 135. The fleet service employees at USAir, who were not represented by any union, numbered approximately 8,000. Pet. App. 7a.

Both the IAM and the United Steelworkers of America petitioned the NMB for an election among the USAir fleet service employees. The successful union, if any, would represent the combined USAir and Shuttle fleet service employees. On August 10, 1992, the NMB granted the "single carrier" petition, holding that USAir and Shuttle would be treated as a single carrier. The election votes of the combined fleet service employees were then counted in the representation election. Less than a majority of the employees voted for union representation and the NMB ruled that no union would be certified to represent these employees. Pet. App. 7a-8a.

On August 31, 1992, the IAM advised each Shuttle fleet service employee, by letter, that they were no longer

represented by a union. Petitioners stopped paying union dues and were generally treated by the USAir Shuttle as unrepresented employees. Pet. App. 8a.

In March 1993, Shuttle unilaterally furloughed thirty fleet service employees, including ten of the petitioners. Thereafter, in November 1993, Shuttle furloughed, or provided voluntary retirement in lieu of furlough to, eighty-eight fleet service employees, including the remaining petitioners. Pet. App. 8a, 8a n.2.

Petitioners filed suit in May 1994. Against the IAM, petitioners claimed a breach of the duty of fair representation, state-law fraud, and violation of the Age Discrimination in Employment Act ("ADEA"). Petitioners alleged that the IAM breached its duty of fair representation by seeking a "single carrier" finding, by not warning petitioners of the consequences of the NMB proceeding, and by failing to protect petitioners after losing the election. Petitioners also brought a state-law fraud claim against the IAM, based on the same pre-election conduct challenged in the fair representation claim, as well as a claim pursuant to the ADEA, alleging that the IAM had caused petitioners' loss of employment.

The IAM moved for summary judgment on all of these claims and the district court ruled in favor of the IAM on each claim. With respect to the fair representation claim, the district court held that petitioners' claim was barred by the statute of limitations. The district court further held that petitioners' state-law fraud claim, based on the same conduct as the fair representation claim, was preempted. Concerning the ADEA claim, the district court found that petitioners had not identified any evidence that the IAM was involved in or caused petitioners' loss of work. Pet. App. 28a-33a. As to the "single carrier" proceeding, the district court found that the NMB's decision was jurisdictionally valid because the IAM and the United Steelworkers of America had invoked the

NMB's jurisdiction seeking a "single carrier" finding. Pet. App. 24a.

Petitioners appealed the district court's decision to the Court of Appeals for the District of Columbia Circuit. The Court of Appeals affirmed the district court's decision and adopted its unpublished decision.

REASONS FOR DENYING THE WRIT

With regard to the IAM, the court below properly held that petitioners' duty of fair representation claim preempted their identical state-law fraud claim. Petitioners have not identified any reason for granting a writ of certiorari on this count. Nor have petitioners offered a basis to reject the lower court's findings that petitioners had failed to adduce any evidence to support an age discrimination claim against the IAM. Finally, the lower court's decision concerning the NMB's representational determination was proper.[1]

1. Petitioners appear to challenge the holding below that the duty of fair representation preempts petitioners' state-law fraud claim. Petition for Writ of Certiorari ("Pet.") 18-20. This argument lacks merit. Petitioners' fraud claim hinged on their assertion that the IAM, when it was their collective bargaining representative, made misrepresentations to them concerning matters integral to that representation. Pet. App. 32a. This conduct was also the basis for petitioners' claim of a breach of the duty of fair representation. *Id.* As this Court clearly held in *Vaca v. Sipes*, 386 U.S. 171 (1967), however, *federal* law governs a union's duty of fair representation, a duty which may not be subjected to potentially inconsistent obligations derived from state law. *Vaca*, 386 U.S. at 188-93.

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[1] Petitioners do not challenge the Court of Appeals' decision that petitioners' duty of fair representation claim is barred by the statute of limitations.

Following *Vaca*, the courts of appeals invariably have held that state claims identical to fair representation claims and relating only to a union's conduct as the collective bargaining representative are preempted by the federal duty of fair representation. *See BIW Deceived v. Local S6, Indus. Union of Marine and Shipbuilding Workers of Am.*, 132 F.3d 824, 830 (1st Cir. 1997); *Nellis v. Air Line Pilots Ass'n*, 15 F.3d 50, 51 (4th Cir. 1994); *Richardson v. United Steelworkers of Am.*, 864 F.2d 1162, 1166-67 (5th Cir. 1989); *Johnson v. Int'l Union Local No. 23*, 828 F.2d 961, 967 (3rd Cir. 1987); *Carter v. Smith Food King*, 765 F.2d 916, 921 (9th Cir. 1985); *Maynard v. Revere Cooper Prods., Inc.*, 773 F.2d 733, 735-36 (6th Cir. 1985). The decision of the Court of Appeals below to deny petitioners' state-law claim on this ground is in conformity with these appellate decisions and with this Court's directive in *Vaca*.

Petitioners sidestep this line of precedent and instead argue that this Court's decision in *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994) saves their claims. Pet. 19-20. But there is no conflict between the decision below and that case. In *Hawaiian Airlines*, this Court held only that state-law claims involving rights and obligations that arise separately from collective bargaining agreements are not "minor disputes" under the Railway Labor Act, 45 U.S.C. §§ 151-188. 512 U.S. at 256-62. This Court did not hold, as petitioners suggest, that all state-law claims which are not "minor disputes" may be maintained in the face of other federal law. Indeed, this Court has recognized that federal labor law preempts state law in a variety of contexts not addressed by *Hawaiian Airlines*. *See generally, Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 409 n.8 (1988).

Here, no party claims, and no court has held, that the conduct alleged in petitioners' state-law claim constitutes a "minor dispute" subject to mandatory arbitration. Here,

pursuant to *Vaca*, the federal duty of fair representation preempts petitioners' state-law fraud claim as it challenges the IAM's conduct in its capacity as collective bargaining representative.

Nineteen of the petitioners further argue, for the first time in this proceeding, that their state-law claim against the IAM cannot be preempted by the duty of fair representation because they have retired from Shuttle and are no longer covered by the Railway Labor Act. Pet. 20. These petitioners rely upon *Allied Chemical and Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971), in which this Court held that retirees are not "employees" as defined by the National Labor Relations Act and are not part of a bargaining unit for the purposes of collective bargaining.

Of course, the *current* retirement status of the nineteen petitioners alters neither the duty of fair representation that the IAM owed to them during their employment nor the fact that the fraud claim is derived from the IAM's conduct prior to their retirement. As with the other petitioners, the misconduct alleged under state law could implicate the duty of fair representation under federal law. In fact, these nineteen petitioners expressly sought recovery pursuant to the federal duty of fair representation for the alleged misrepresentations made by the IAM. These petitioners cannot now claim they were not owed a duty of fair representation due to their status as retirees and seek recovery pursuant to state law.

2. Petitioners also argue that the court below failed to apply the appropriate standard of proof to their claims under the ADEA and instead imposed a heightened burden on them. Pet. 22-25. With regard to the ADEA claim raised against the IAM, however, the lower court found "no evidence of record that IAM had anything to do with plaintiffs' furloughs . . . ." Pet. App. 33a. Petitioners do not now point to any evidence demonstrating

that the IAM participated in or was involved with the decision to furlough petitioners. It is clear that petitioners' ADEA claim against the IAM failed not due to an erroneous standard of proof, but due to a lack of any evidence to support their claim.

3. Petitioners also challenge the NMB's jurisdiction in the single-carrier proceeding, as well as the NMB's conduct of the representation election. To the extent these charges are pertinent to petitioners' claims against the IAM, the IAM incorporates by reference the Brief For Respondents USAir, Inc. And Shuttle, Inc. In Opposition.

CONCLUSION

Respondent IAM respectfully requests that the petition for writ of certiorari be denied.

Respectfully submitted,

JOHN A. EDMOND
(Counsel of Record)
JEFFREY A. BARTOS
ANNA L. FRANCIS
GUERRIERI, EDMOND & CLAYMAN, P.C.
1331 F Street, N.W.
Suite 400
Washington, D.C. 20004
(202) 624-7400
Counsel for Respondent International Association of Machinists and Aerospace Workers, AFL-CIO